

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:08-cr-84

WANDA FOLDEN,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for Standard consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

By their written and filed response, the United States and the Defendant do not object to the reduction ordered herein.

Defendant's original Presentence Investigation Report attributed to her 3,703.8736 kilograms of marijuana equivalency (5.06 cocaine base, 1 pound of marijuana and \$1,339 cash converted to 41.72 grams of cocaine base). Her original offense conduct resulted in a base offense level of 34. This Defendant received a two-level reduction pursuant to U.S.S.G. §2D1.1, Commentary, Application Note 10(D) of the Supplement to the 2007 Guideline Manual, a two-level reduction pursuant to U.S.S.G. § 5C1.2 for meeting the criteria in subdivisions (1)-(5) of that section, and a two-level increase pursuant to U.S.S.G. §3B1.4. Defendant also received a three-level adjustment for acceptance of responsibility. No other enhancements or reductions were applied and her total offense level was 29. Given this total offense level of 29 and a criminal history category of I, the Defendant's original guideline sentence range was 87-108 months. On September 22, 2008, the Court sentenced her at the bottom of the guideline range to a term of imprisonment of 87 months.

During her period of incarceration, the Court observes that Defendant has had no disciplinary sanctions. She has completed her financial responsibility requirements, the 40-hour drug education program offered by the Bureau of Prison, and complied with the DNA collection requirement. The Defendant also obtained her G.E.D on March 31, 2011. The Court notes that on November 4, 2011, the Government filed a Motion to Reduce Sentence Pursuant to Rule 35. A hearing on that motion will be conducted on January 12, 2012.


Prior to her conviction for the instant offense, Ms. Folden had two convictions for the fraudulent use of a credit card, one misdemeanor conviction for shoplifting, and a conviction for truancy. None of these sentences resulted in Ms. Folden's incarceration and all of them occurred several years before the instant conviction. She has a history of substance abuse and mental health illness. However, the Court also observes that she has maintained employment in the past in the

home healthcare field.

Based on the foregoing considerations, the Court **ORDERS** that Defendant's base offense level be reduced by six levels to twenty-eight (28). After consideration of her specific offense characteristics, an adjustment for her role in the offense and her acceptance of responsibility, Ms. Folden's new total offense level is twenty-five (25). Given this total offense level and her criminal history category of I, Defendant's new advisory guideline range becomes fifty-seven to seventy-one (**57-71**) months. It is further **ORDERED** that Defendant's previous sentence be reduced to a term of fifty-seven (**57**) months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, to the United States Attorney, to the United States Probation Office and to the United States Marshals.

ENTER: January 11, 2012


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA